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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/475,534	12/30/1999	ROSS G. KAMINSKY	99.853	6464

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EXAMINER

RUDY, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/475,534

Applicant(s)

KAMINSKY ET AL.

Examiner

Andrew Joseph Rudy

Art Unit

3627

MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-28 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) 31-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of claims 31-37 in Paper No. 12, received January 15, 2004 is acknowledged. The traversal is on the ground(s) that the invention is not a different species. This is not found persuasive because claims 31-37 are directed to an invention that does not require any computer function whatsoever. The scope of these claims is not commensurate to the previously examined claims. Inapposite to Applicant's assertion, the scope of claims 31-37 is directed towards a separate inventive idea. Thus, the restriction requirement is deemed proper.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 31-37 are drawn to an invention nonelected with traverse in Paper No. 12 received January 15, 2004. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

3. Applicant's remarks regarding the rejection of claims 8-28 under the second paragraph of 35 U.S.C. 112 are convincing. The rejection is withdrawn.

***Claim Rejections - 35 USC § 103***

4. Claims 8-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Broka et al., US 5,809,483 in view of Mandler et al., US 5,732,400.

Broka discloses, e.g. col. 5, Figs. 21(a) & 21(b), a modify quote window 2100 used in an on-line computerized trading system to record trades and quotes within a time duration. Broda does not explicitly disclose risk assessment or storing unmatched orders and quotes, e.g. col. 10, lines 25-34. However, it is common knowledge that computer generated and stored reports comprising unmatched orders and quotes are known in computer-automated stock/bond trading systems.

Mandler discloses an on-line computerized trading system to match trades and quotes incorporating a level of risk assessment via a financial clearing house 40 within a time duration. Mandler's risk assessment is deemed automatic.

To have provided the trading system of Broka to include a level of risk assessment would have been obvious to one of ordinary skill in the art in view of Mandler. The motivation for providing such for an updated quote would have been to incorporate well known risk assessment criteria business rules, e.g. using an updated quote based upon new business criteria of a particular item (e.g. stock and/or bond) to assess whether a trade is to be executed or not.

Regarding Applicant' risk level, aggregate risk level, delta value, beta value, net delta, net contract volume, contract quantity, positive and negative risk, put series options, regeneration

increment, etc. and match each with unmatched trades were all common knowledge terms and applications used within the financial investment community at the time of Applicant's filing date. To incorporate these features into the invention of Broka, as modified my Mandler, would have been obvious to one of ordinary skill in the art. The motivation for doing such would use common knowledge financial risk and trade analysis information used in business decisions.

Applicant's Response has been reviewed, but is not convincing. It is noted that claim 8 requires no particular sequence of events. Thus, the steps enumerated need not happen in the particular order recited. Regarding the system of Broka, quotes and orders are inherently matched as that is what the bond trading system is designed to accomplish. Broka's system provides for automatic updates of the quotes, e.g. col. 7, lines 39-47. Thus, an updated quote inherently contemplates risk factors, e.g. associating trading parameters, aggregate risk and risk threshold, in order to arrive at a new and update quote price. These factors are common knowledge in the trading, e.g. stocks, bonds, art. Thus, Applicant assertion that Broka does not possess these features is not convincing.

Though Broka does use a manual quote modification screen where the updated quote database, e.g. 300, of Broka is used in conjunction with a computer-to-computer interface (CTCI) 150 that is deemed automated. Applicant's claim language does not preclude the fact that a part of the Broak system is done manually. Again, the aggregate risk management that is inherently used when an updated quote is generated fully encompasses the scope and content of Applicant's claim language. That is, a risk level may be ascertained by the number of shares bid

upon and ultimately purchased. The risk level may include such common knowledge factors for an item, e.g. oranges, such as weather, labor conditions, bug infestations, diesel and/or gasoline prices, etc. that are used to determine what a modified quote may be after an initial quote has been either accepted or rejected during the buying process.

Applicant's assertion that the risk level is determined after a trade has been executed is not convincing. These claim features are not required to meet Applicant's claim 8 language. If from claim 8, line 7, "a quote having trading parameters" is not filled, no risk level need be determined. Thus, the risk level and aggregate risk level may not exist to fully meet Applicant's claim language. To compare a common knowledge risk threshold to a nonexistent aggregate risk level and risk level is deemed within the quote management system of Broda, as modified by Mandler. Likewise, to compare a common knowledge risk threshold to common knowledge existent aggregate risk level and risk level is also deemed within the quote management system of Broda, as modified by Mandler.

As is Applicant's arguments directed towards the risk level being determined after a trade has been executed are not relevant as the singular "generated trade" referenced from claim 8, line 8 need not be one of the "trades" from claim 8, line 3. In broad scope and content it may be a separate entity and need not occur. Again, if no quote having associated trading parameters is filled, no risk level and aggregate risk level need be positively determined.

Applicant does not argue the rejection of the dependent claims 9-28, e.g. risk level, aggregate risk level, delta value, beta value, net delta, net contract volume, contract quantity,

positive and negative risk, put series options, regeneration increment, etc.. The rejection focusing on the risk level, aggregate risk level, delta value, beta value, net delta, net contract volume, contract quantity, positive and negative risk, put series options, regeneration increment, etc. are deemed to be conceded by Applicant.

5. Further pertinent references of interest are noted on the attached PTO-892.

### ***Conclusion***

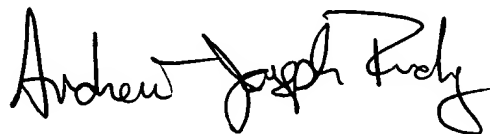
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808. The examiner can normally be reached on Tuesday thru Friday, 7:30 a.m until 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink that reads "Andrew Joseph Rudy". The signature is written in a cursive, flowing style with a large initial 'A' and 'R'.